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State v. Sorensen Respondent's Brief Dckt. 42855

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42855
Plaintiff-Respondent,)	
)	Jerome County Case No.
v.)	CR-2011-7519
)	
STEVEN STEELE SORENSEN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Sorensen failed to establish that the district court abused its discretion by revoking his probation and executing a reduced unified sentence of 20 years with four years fixed upon his conviction for battery with the intent to commit a serious felony?

Sorensen Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Sorensen pled guilty to battery with the intent to commit a serious felony, and the district court imposed a unified sentence of 20 years with 10 years fixed and retained jurisdiction for 365 days. (R., pp.84-91.¹)

After a period of retained jurisdiction the district court suspended Sorensen's sentence and placed him on probation for 15 years. (R., pp.109-21.) Approximately six months later, Sorensen's probation officer filed a Report of Probation Violation alleging Sorensen had violated his probation by failing to pay his fines, fees, court costs, and restitution; having unsupervised contact with minors; incurring new misdemeanor charges; failing to abide by his curfew; consuming alcohol; and using methamphetamines and marijuana. (R., pp.130-42.) Pursuant to a plea agreement, Sorensen admitted to some of the violations alleged in the Report of Probation Violation, and the state agreed to dismiss the remaining allegations. (R., p.155.) The district court revoked Sorensen's probation and ordered his underlying sentence executed; however, it retained jurisdiction for a second time. (R., pp.163-68.)

After a second period of retained jurisdiction, the district court suspended Sorensen's sentence and placed him on probation for 10 years. (R., pp.174-99.) Less than three months later, Sorensen's probation officer filed a new Report of Probation Violation alleging Sorensen had violated his probation by failing to pay his fines, fees, court costs, and restitution; failing to successfully complete his CAPP Aftercare programming; failing to enroll in sex offender treatment programming; incurring a new

¹ Citations to the Record are to the electronic file "#42855 Steven Sorensen.pdf."

misdemeanor charge; failing to update his sex offender registration; failing to report to his probation officer as directed; leaving Idaho without permission; failing to obtain full-time employment; consuming alcohol; using marijuana; and using methamphetamine. (R., pp.206-09.) Pursuant to a plea agreement Sorensen admitted to some of the allegations and the state agreed to dismiss the rest. (R., pp.221-22.) The district court subsequently revoked Sorensen's probation and ordered his underlying sentence executed; however, it *sua sponte* reduced Sorensen's unified sentence from 20 years with 10 years fixed to 20 years with only four years fixed. (R., pp.226-30.) Sorensen filed a notice of appeal timely from the order revoking probation. (R., pp.231-34.)

Sorensen asserts that the district court abused its discretion by revoking his probation and failing to further *sua sponte* reduce his sentence in light of his enrollment in programming while in jail that could continue in the community and would provide him with a support network. (Appellant's brief, pp.6-7.) Alternatively, Sorensen asserts the district court should have further reduced his sentence to make him immediately eligible for parole. (Appellant's brief, pp. 7-10.) The record supports the district court's decision to revoke Sorensen's probation.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by Idaho Criminal Rule 35. State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009) (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); State v. Marks, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989)). A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. Hanington, 148 Idaho at 28, 218 P.3d at 7. Those standards require an appellant to "establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment." State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing." State v. Wolfe, 99 Idaho 382, 384, 582, P.2d 728, 730 (1978). The reviewing court "will examine the entire record encompassing events before and after the original judgment," *i.e.*, "facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation." Hanington, 148 Idaho at 29, 218 P.3d at 8.

Contrary to Sorensen's claim on appeal, probation in this case was neither achieving the goal of rehabilitation nor protecting the community. Sorensen repeatedly violated the conditions of his probation in this case and did not demonstrate adequate rehabilitative progress. Nor has Sorensen shown that he is deserving of a further reduction of his sentence. Sorensen was afforded numerous opportunities for rehabilitation in this matter, including two periods of retained jurisdiction as well as

community-based treatment programs while on probation. (R., pp.84-91, 109-14, 133, 163-68, 206-07, 209.) Sorensen, however, has repeatedly shown he is unwilling to comply with the terms of his community supervision as he continued to violate rules, refused to cooperate with treatment, continued to consume illegal substances, and incurred new criminal charges. (R., pp.130-33, 206-09.) Sorensen has clearly shown that he is not an appropriate candidate for continued supervision in the community. His refusal to abide by the law and the terms of probation demonstrate his failure to be rehabilitated and his continued danger to society. Sorensen has also failed to demonstrate any entitlement to a further *sua sponte* reduction of sentence, particularly in light of his continued disregard for the terms of community supervision.

At the disposition hearing for Sorensen's second probation violation, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for revoking Sorensen's probation and executing a reduced sentence. (Tr., p.23, L.8 – p.25, L.9.) The state submits that Sorensen has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the December 8, 2014 disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Sorensen's probation and executing a reduced sentence.

DATED this 21st day of September, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of September, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p>1 that we would ask this Court to take into 2 consideration and/or a delayed disposition, release 3 him today and allow him to go do that.</p> <p>4 In the alternative, Judge, what we're 5 asking for, since another rider is not possible in 6 this case, is that this Court sua sponte Rule 35 the 7 fixed portion in this case and allow him to be 8 immediately eligible for parole. That way, 9 hopefully the parole board can help him come up with 10 the appropriate treatment plans and plans within the 11 community without him continuing to serve the 12 significant part of his sentence that is hanging 13 over his head at this time. If we make that a tall, 14 that allows the parole board to continue to monitor 15 him. He has no objection to that, but we would ask 16 that he, if the Court does not consider probation, 17 be allowed to be eligible for parole and allow the 18 parole board to make that decision when they believe 19 that it's appropriate.</p> <p>20 THE COURT: Thank you.</p> <p>21 Mr. Sorensen, anything you wish to share 22 with the Court?</p> <p>23 THE DEFENDANT: Yes, Your Honor. As you know, 24 I have been doing this for, like, four years coming 25 into your court and, you know, being a</p> <p style="text-align: center;">20</p>	<p>1 discouragement to you and to everyone. Your Honor, 2 you know, I haven't really had a very good support 3 system throughout my whole life, and going through 4 this RU program, I've, you know, met Doug Miller, 5 and he's willing to sponsor me, and that's more of a 6 support than I've had in a long time. Kirsten's 7 here in the courtroom with her mother as well, Your 8 Honor. You know, she's been in my life for about 9 seven years and continues to be a positive support 10 in my life.</p> <p>11 I would like to say that it is my 12 decision that I used methamphetamine, and I'm the 13 one that messes up my life, not no one else, Your 14 Honor. I can't sit here and blame it on anyone 15 else, other than myself, and I know that. I would 16 just appreciate if you could take into consideration 17 somehow helping me get into an Interstate compact to 18 be able to, you know, return to a different state to 19 try to better myself from what I can do here in the 20 community where I know everyone that, you know, when 21 I drive down the street I can see and look at 22 someone and say, "Oh, yeah, I've done drugs with 23 them" or, you know, "I've seen them at a drug house" 24 or something like that.</p> <p>25 You know, the reason I didn't move to</p> <p style="text-align: center;">21</p>
<p>1 Idaho Falls with Donna Howard, Your Honor, is 2 because I was told by my original probation officer, 3 which I had six of them, that I could not go to 4 anywhere until I was here for six months and clean. 5 And I told them that, you know, it's going to be 6 hard for me. And upon my relapsing, Your Honor, I 7 did go check in to probation and parole, and I got 8 shut down when I asked to get help to go to an IOP 9 class.</p> <p>10 Also, Your Honor, they came to do the 11 house check, and I asked them there that night if 12 they could please incarcerate me because I was high, 13 and I knew that I was going to get worse. And he 14 just told me he would have to check with his 15 supervisor, and I went downhill more from there, 16 Your Honor.</p> <p>17 And I know it's my fault. I can sit here 18 and tell you about what they said all day long, but 19 in reality, I'm the one that did this to myself, not 20 them. And I just ask that you just please not send 21 me to prison yet, Your Honor, and give me one more 22 shot in the community with a new support system, 23 allow me to do my RU program and as well as IOP 24 classes and whatever classes I can do, Your Honor.</p> <p>25 I'm willing to do a 90/90 program. Me</p> <p style="text-align: center;">22</p>	<p>1 and Mr. Miller have talked about it already. We've 2 also talked about they've got a home -- an RU home 3 in Rockport, Illinois, and maybe, you know, 4 progressively down the line and throughout my 5 probation if I was able to move there and stuff, I 6 think that would greatly help me too, Your Honor. 7 That's all I have.</p> <p>8 THE COURT: Thank you.</p> <p>9 All right. The Court, for purposes of 10 disposition, does consider the four goals of 11 sentencing, as well as those factors under 19-2521 12 to determine whether probation or some form of 13 incarceration is appropriate. The Court does 14 consider the character of the offender, the nature 15 of the underlying offense, as well as the 16 defendant's prior record and prior performance in 17 community supervision.</p> <p>18 Certainly, Mr. Sorensen, this Court has 19 afforded you every opportunity to be successful in 20 the community. I know it seems like every time 21 where you've made choices that have led you back 22 here, you continue to talk about one more chance, 23 that you now have the support system in place. 24 While I know you don't mean to, it does sound like 25 that, in some respects, you blame your probation</p> <p style="text-align: center;">23</p>

<p>1 officer for his decisions, assuming what you share</p> <p>2 with the Court is correct, for the reason why you're</p> <p>3 back here again.</p> <p>4 However, it is apparent that you have</p> <p>5 been afforded treatment within the community, but it</p> <p>6 also appears you've been discharged for noncompliance</p> <p>7 for treatment. You've been afforded two riders.</p> <p>8 Each time you come out and believe that you'll be</p> <p>9 successful in the community, but it's not very long</p> <p>10 until you get out that you're back to your old ways.</p> <p>11 The concern that I have is that when you</p> <p>12 develop and learn tools and skills, when you're back</p> <p>13 in the community, you choose not to use them. You</p> <p>14 choose just to go back to your own ways. And unless</p> <p>15 you're willing to change, it doesn't make any</p> <p>16 difference what your support network in the</p> <p>17 community is, because you're going to let that</p> <p>18 network down. And this Court has afforded you many</p> <p>19 opportunities, and clearly, in this Court's view,</p> <p>20 the goal of rehabilitation has not been attained</p> <p>21 with the multiple attempts that have been afforded</p> <p>22 you.</p> <p>23 And so the Court, having revoked your</p> <p>24 probation, will reimpose your sentence; however, the</p> <p>25 Court, pursuant to Rule 35, will modify the</p> <p style="text-align: center;">24</p>	<p>1 penitentiary portion of the sentence to a 20-year</p> <p>2 unified sentence with 4 years fixed, 16 years</p> <p>3 indeterminate, not to exceed 20. Credit for time</p> <p>4 served is 636 days. The Court will we reimpose the</p> <p>5 fine to the extent unpaid. The Court will reinstate</p> <p>6 any prior order of restitution. You do have 42 days</p> <p>7 from the file stamp within which to appeal. If you</p> <p>8 cannot afford the cost of the appeal, you may</p> <p>9 proceed in forma pauperis.</p> <p>10 Direct the clerk to enter judgment.</p> <p>11 Conditions of bail having not been met, there is no</p> <p>12 bail to exonerate, and order the defendant committed</p> <p>13 to the State Board of Corrections.</p> <p>14 Anything further?</p> <p>15 MR. HORGAN: No, Your Honor.</p> <p>16 (Recess.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">25</p>
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